

**NORTHWESTERN HAWAIIAN ISLANDS
CORAL REEF ECOSYSTEM RESERVE ADVISORY COUNCIL MEETING**

Wednesday October 5, 2005, 9:00 a.m. – 4:00 p.m.

Thursday October 6, 2005, 9:00 a.m. – 12:00 p.m.

*Reserve Office Conference Room
6600 Kalaniana'ole Highway, Suite 300
Hawai'i, O'ahu*

Draft Notes

Day One

ATTENDEES [Advisory Council Members]: Linda Paul (Conservation); Laura Thompson (Conservation); Kem Lowry (Citizen-At-Large); Tim Johns (State of Hawai'i); Buzzy Agard (Native Hawaiian); Cindy Hunter (Research); William Aila (Native Hawaiian); Don Schug (Research); Gail Grabowsky (Education); Bill Gilmartin (Research); Jessica Wooley (Conservation Alternate for Paul Achitoff); Lloyd Lowry (U.S. Marine Mammal Commission); Michael Tosatto (NOAA National Marine Fisheries); Beth Flint (U.S. Fish and Wildlife Service); Naomi McIntosh (Hawaiian Island Humpback Whale National Marine Sanctuary (HIHWNMS)); John Muraoka (U.S. Department of Defense); Eric Kingma (for Kitty Simonds, Western Pacific Fishery Management Council); Bob Wilson (U.S. Coast Guard); 'Aulani Wilhelm (Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (NWHI CRER)); Athline Clark (State of Hawai'i Alternate for Tim Johns in the morning); Sylvia Spalding (for Kitty Simonds in the afternoon); *Excused*: Rick Gaffney (Recreational Fishing); Bob Gomes (Commercial Fishing); Kekuewa Kikiloi (Native Hawaiian) *Absent*: Ray Arnaudo (U.S. Department of State); Philip Taylor (National Science Foundation).

[Alternate Council Members (not representing voting members)]: Isabella Aiona Abbott (Native Hawaiian).

[NWHI CRER Staff]: Andy Collins; Moani Pai; Kaliko Amona; Sean Corson; Tommy Friel; Naomi Sodeani; Malia Chow; Hokuala Johnson.

[NMSP Staff]: Allen Tom; Hans Van Tilburg.

[Members of the Public]: Cha Smith (KAHEA); Stephanie Fried (Environmental Defense); Ellen Athas (Ocean Conservancy); Don Polhemus (DLNR, Department of Aquatic Resources); Mark Guagliardo (public); Irma Agard (public). Takiara Ingram (DLNR, Department of Aquatic Resources).

PURPOSE OF THE MEETING: To provide the Reserve Advisory Council (RAC) with an update on the status of activities in the Reserve Operations Plan (ROP).

I. CALL TO ORDER (PAUL)

Vice-Chair Linda Paul called the meeting to order at 9:20 am.

II. REVIEW AND APPROVAL OF MINUTES (PAUL)

Eric Kingma stated that he'd like to have the minutes reflect the conversation between Paul Achitoff (Conservation Representative) and himself at the June 1-2, 2005 RAC meeting. Kingma also stated that he would like to have the minutes amended to reflect his question about anchoring to live rock, not coral. Finally, Kingma stated that he would like the June 1-2 RAC meeting minutes reflect his statement that he has been working for the Western Pacific Fishery Management Council (WPFMC) for over five years, contrary to Achitoff's statement that he hadn't been around for five years.

Cha Smith stated that her comments were not accurately reflected in the June 1-2 RAC meeting minutes (page 8), she also stated that she had serious concerns with the sanctuary draft resolution as it was being proposed, that it required more in depth assessment of the proposed resolution by the acting chair.

A vote on approving the January and June meeting minutes was held. The minutes from both meetings were approved unanimously; once amended as corrected.

III. REVIEW AND APPROVAL OF AGENDA (PAUL)

Paul stated that the agenda would be amended, which would move the DEIS update to the afternoon. Paul stated that the reason would be because of the state's recent position on the refuge and Peter Young's (Chair, Department of Land and Natural Resources (DLNR)) statement on the five year phase-out of commercial fishing. Athline Clark stated that the 5-year phase out of commercial fishing statement was Peter Young's personal position.

The agenda was approved and accepted, with the changes.

IV. STAFF UPDATES/OLD BUSINESS

1. Update on the State of Hawai'i Marine Refuge (CLARK)

Clark introduced Dr. Dan Polhemus who is the new administrator of DLNR's Division of Aquatic Resources (DAR). Clark stated that the governor signed the State Marine Refuge rules into law on Thursday September 29, 2005. Clark commented that DLNR anticipates that the rules will be out in the public with all signatures no later than 10 working days after September 30, 2005. She stated that the press release given out at the meeting and the draft rules will be posted on DLNR's website.

Clark then mentioned that both the governor and Young declared that the NWHI is a special place and they would like to encourage the National marine Sanctuary Program to support an organizational phase out of commercial fishing in federal waters, making both state and federal waters close to fishing after sanctuary designation, making a place in the world where no extractive commercial activities exist. Clark then commented that Peter Young stated that it was his desire to see the phase out in five years with fair compensation provided to current fishing boat owners.

Kingma then asked what the administrative procedure process was, with the posting of the draft state rules; and how much time the public had to comment. Clark responded that the rules have

been through two rounds of public testimony, four rounds of Board of Land and Natural Resources (BLNR) public testimony, and two rounds of public testimony with the Small Business Regulatory Review Board, so the posting was just a notice of the rules going into effect and no more public comment is required.

Kingma asked if the effective date was ten days from last Friday. Clark stated that yes, that would be the effective date; however, normally the effective date means that there is a law but it doesn't mean that they have to start enforcing that law. Clark stated that DLNR is still in the process of trying to work through all the other procedures with that and they need to have time to provide notification to all the stakeholders as to what the new process would be, and that is the normal procedure for all laws.

Clark also stated that the governor and (Peter) Young mentioned that the State will be pursuing an application for the Northwestern Hawaiian Islands to be a designated a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site (WHS) with support from some nongovernmental organization (NGO) partners. She stated that Dr. Takiora Ingram, DLNR Policy Specialist, would head up the application process.

Laura Thompson asked Clark to provide more details on the WHS application. Clark deferred the question to Ingram, who explained the UNESCO and the WHS application process. She also provided examples of both natural (Australia's Great Barrier Reef and the Galapagos Islands) and cultural sites (Independence Hall and the Great Pyramids) that are WHS sites. Ingram also stated that the US hasn't applied for WHS status recently. Paul stated that the NWHI application would be for a mixed natural and cultural site. Clark also stated that Hawai'i has one WHS which is Hawai'i Volcanoes National Park.

Bill Gilmartin asked if there was a requirement in the WHS application for public access. Paul stated that there was for the cultural site application, and that the issue of access was being dealt with in the application, as access may be defined as access only for Native Hawaiian cultural practices.

2. Update on the NWHI Marine Refuge Act of 2005 (PAUL)

Paul stated that she talked to Anne Stewart from Congressman Cases' office. She stated that at the moment they are in the process of trying to find Republican co-sponsors of the bill (H.R. 2376). Clark commented that Congressman Case has requested the governor's support of the bill.

Gilmartin asked what Congressman Abercrombie's position was on H.R. 2376 and the Sanctuary Designation process. Paul stated that he feels Congressman Case introduced H.R. 2376 for political reasons, and that Case should have discussed it with the National Oceanic and Atmospheric Administration (NOAA) first.

3. Establishment of Winter RAC meeting dates (JOHNSON)

Johnson posed three dates in January and February to the RAC and mentioned that she would be polling the RAC via email to set the next RAC meeting date. Hunter also asked if she could poll

the RAC on meeting dates for the Spring RAC meeting. Johnson stated that she would do that as well.

4. Update on member selection (JOHNSON)

Johnson briefly talked about member selection, stating that the next due date for applications was October 31, 2005. Johnson mentioned that RAC members, whose terms are technically up, are still on the RAC until the new members are formally seated. She held up the Federal Register notice while Wilhelm commented that there have been numerous applications for all the RAC seats, however since the Executive Order (E.O.) has certain requirements for some seats, many of the applicants who applied were not qualified, according to the stipulations in the E.O..

5. Update on 2005 SAC Coordinator's Meeting in Scituate, MA (JOHNSON)

Johnson talked about the recent RAC/SAC Coordinator's meeting which took place on September 18-22 in Scituate, MA. She commented on the training that she and NWHICRER Program Manager, Moani Pai received and mentioned that the next Coordinator's meeting would be held in 2007.

6. Update on Casitas Grounding (COLLINS)

Andy Collins presented an update of the Casitas grounding. He talked about the process of removing the Casitas, getting the ship off the reef as quickly as possible, the beneficial weather during the recovery process and damage assessment and follow-up that needs to be done based on the report that was issued. Collins stated that he believed the report would be available this month (October). Collins commented that the report will determine what kind of follow-up and damage assessment needs to be done. Collins praised the Coast Guard and their rapid response effort in the Casitas grounding.

Commander Bob Wilson stated that the Coast Guard cutter Walnut that was doing the littering never dropped anchor on the reef. He also stated that both Coast Guard cutters Kukui and Walnut also removed 40,000 lbs of marine debris this field season all in deeper water.

Thompson asked what kind of boat the Casitas was, and why it went aground.

Collins stated that the Casitas was a 145 foot fishing boat, retrofitted to the marine debris crews. Collins stated that while the Coast Guard report is still ongoing; the Casitas ran aground at 2am, in the northeastern corner of Pearl and Hermes reef. Collins stated that the investigation takes so long because there is a need to drug test the captain and crew. Collins also mentioned that the investigation also involves looking through maintenance logs, and records, etc.

Clark added that any ship that left from port in Hawai'i to assist in the activities with Casitas extraction was hull inspected by the hull inspection team.

Gilmartin asked if the Casitas was hull inspected. Beth Flint stated that the US Fish and Wildlife Service (USFWS) has a standard requirement for hull inspections. Flint stated that she would check the Casitas' FWS permit to see if that requirement was fulfilled at the beginning of the season.

Smith asked if there was a salvage ship that came down from Alaska and if they inspected the hull of that ship. Collins commented that two barges from Alaska did assist in the recovery of the Casitas and were inspected prior to the commencement of those activities, even though there wasn't as much concern about the two Alaska barges because the potential for hull fouling isn't as bad in the cold climate.

Kingma asked if the marine debris field season was re-initiated. Collins stated that the marine debris crews are currently using French Frigate Shoals as their platform. Collins also stated that the marine debris crew will be up in the NWHI clearing out marine debris until November.

Stephanie Fried asked if the RAC would reconsider mandatory Vessel Monitoring System (VMS) and a reporting thing linked to depths and boundaries (in original draft of the ROP), with the idea that if a skipper were approaching a protected area, a signal would be sent to notify the captain and also to notify enforcement. Given that the vessel under NOAA ran aground, Fried asked if NOAA was willing to consider the mandatory VMS recommendation that the RAC put out four years ago.

'Aulani Wilhelm stated that the discussion on mandatory VMS is something that is being considered in the draft management plan for the proposed sanctuary.

Michael Tosatto stated that for the record the contract vessel was under the control of the captain of the vessel, not under the control of NOAA.

Discussion continued on Marine Debris funding and legislation, and where the crew of the Casitas stayed once they made landfall at Pearl and Hermes atoll.

Paul commented that the RAC has talked about the need for vessel grounding insurance. She then asked what the total cost was, of the extraction and removal of the Casitas by the state and the responsible parties' insurance company. Collins commented that he didn't have that figure and mentioned that some of the cost was channeled through USFWS and the state. Flint commented that the cost is borne by responsible party until the insurance company runs out of money. Flint then added that there will be a final total after everything is added up; including time spent by employees of each respective agency involved in the response operation of the Casitas. Clark commented that all agencies put together cost assessment of staff time, etc.

Discussion then progressed to marine debris removal and where one can get the most recent data on the amount of marine debris removed in the NWHI.

Fried then asked if they knew what was in the bilge water when it was pumped out of the Casitas. Collins commented that they (response and extraction crews) pumped the bilge water in to float the Casitas and that treatment of bilge water involves chlorinating it.

Flint commented that the proper term isn't bilge water, its ballast water. Paul then asked if the draft management plan was going to need tweaking. Collins stated that the emergency response portion of the draft management plan is being changed and that the Casitas incident changed that respective draft management plan section a lot.

Kingma commented on international issues and marine debris, providing an example of WESPAC's coordination with NOAA Fisheries' Pacific Island Regional Office (PIRO) to secure funding to recycle derelict fishing gear. Kingma then described the process by which the fishing gear gets retrieved and then burned at the H-Power plant. Kingma commented that the program will start in the next month, with a big fishing gear collection bin which will be located at Honolulu Harbor. Kingma also remarked that while there is no incentive for fishermen to turn in derelict fishing gear, many do because gear found on the high seas can pose serious danger when it gets tangled in boat props.

Conversation continued on the marine debris issue.

Ellen Athas stated that the Ocean Conservancy has been active in current legislation which senator Inouye will be sponsoring on the marine debris issue. She stated that the Ocean Conservancy has a separate office working on the marine debris bill. Grabowsky asked if the bill was mostly cleanup-oriented. Athas stated that the respective legislation is cleanup-oriented, as marine debris is a huge risk for alien species and a danger to wildlife.

BREAK

Paul stated that the presentation by Kekuewa Kikiloi would be postponed until the next day (10/6) and adjourned the meeting for a break at 10:44pm.

Meeting reconvened at 11:00. Paul stated that another item would be added on to the agenda, Athas would be commenting on a report by the Ocean Conservancy in the afternoon.

IV. UPDATES - CONTINUED

7. Update on rescheduled 2005 RAMP cruise (WILHELM)

Wilhelm gave a report on the RAMP cruise and the minor fire that occurred on the Hi'ialakai. Wilhelm also complimented the crew of the Hi'ialakai on their quick response to the fire and for getting the ship home safely. She also thanked the crew for their continued service to the Reserve.

Cindy Hunter asked about the Hi'ialakai and how wastewater is taken off the ship. She asked if the engines going out during the fire affected the wastewater treatment system. Wilhelm replied that nothing affected the Hi'ialakai's ability to treat wastewater and then stated that she would follow-up on the wastewater treatment specifics.

8. Update on exhibits and outreach activities related to the Middleton/Liittschwager Archipelago book (WILHELM)

Wilhelm talked about the upcoming events related to the release of the Middleton/Liittschwager book entitled *Archipelago*. Naomi Sodeani spoke of the partnership between Susan Middleton and David Liittschwager and the NWHICRER, the USFWS and the State of Hawai'i. Sodeani commented on bringing the place (NWHI) to the people and talked about the educational value and upcoming presentations.

9. Update on *Hypnea musciformis* in NWHI (Abbott)

Dr. Isabella Abbott gave a presentation on the *Hypnea musciformis* issue in the NWHI. She commented that *Hypnea* is an epiphyte, meaning that the seaweed likes to attach itself to other algae.

Abbott gave a historical overview of how *Hypnea* came to Hawai'i; she mentioned that more than 75% of the windrows of seaweed she observed in Maui had *Hypnea* in them. Abbott then commented that the algae is highly invasive and has a rapid growth rate.

Gilmartin asked if the water temperature slows the movement of *Hypnea* in the NWHI, Abbott commented that *Hypnea* has been found in Florida and as far north as Woods Hole MA. She then remarked that *Hypnea* likes cooler water, and that one wouldn't find it more south than Brazil. Paul asked what would keep the *Hypnea* population down in Florida; Abbott commented that she didn't know. Abbott then proposed that the Sette (Oscar Elton Sette), go up to the NWHI and locate *Hypnea* growing.

Flint asked if *Hypnea* fragments could survive desiccation. Abbott stated that the *Hypnea* was hardy and could survive a lot. Abbott also reported that no algae was located on the 2005 Reef Assessment and Monitoring Program (RAMP) cruise, as reported by Randy Kosaki, who is currently on the cruise, scheduled to arrive on October 6, 2005.

Abbott then stated that she has discovered 5 or 6 new species of algae and that she would be naming them after Senator Inouye; the Sette; the Hi'ialakai; and the captain of the Hi'ialakai.

Kingma asked where *Hypnea* was sited in the main Hawaiian Islands; Abbott stated that *Hypnea* has been located on Kaua'i, Maui, O'ahu, but not on the Big Island.

V. PUBLIC COMMENT

Paul called for Public comment. Smith commented on the Casitas, she offered congratulations to the responders on the Casitas grounding. She stated that it underscored the need for cooperative management approach to coordinate and manage, oversee and work together to take care of the NWHI with the USFWS, and the State.

Collins also thanked KAHEA for their organization of the "Show and Tell" session which involved teachers that went on the recently completed Education Cruise.

Fried also offered congratulations to those individuals who worked on the State Marine Refuge rules. Fried then commented that the Hui would like an opportunity to make a formal response to the governor's action. Paul asked if anyone on the RAC would have an objection to having the Hui do a presentation and make comments after Ellen Athas' presentation. Paul posed the question of Fried testifying to the entire RAC; there being no objection, Fried would present on KAHEA's response to the state's rules on the State Marine Refuge in the afternoon (10/05). Athas would also present on the Ocean Conservancy Report in the afternoon.

Kingma commented that another staffer from WPFMC would be at the afternoon meeting. Kingma also commented that the PIRO Science Center is continuing to work on bottomfish overfishing in the archipelago and their respective response to the Ocean Conservancy report is forthcoming. Paul asked if Kingma could get that response to Reserve staff so it could be circulated via email. Kingma stated that the response is currently undergoing internal review and will be available in a month or so for public comment. Kingma stated that he would tell Jarad Makaiau (WPFMC) to disseminate the report, or have the Science Center do it.

LUNCH

Paul adjourned the meeting at 11:37 pm. for lunch.

CALL TO ORDER (JOHNS)

The meeting was called to order at 1:18 by Chair Tim Johns.

10. Update on DEIS/Management Plan (postponed from the morning) (CORSON)

Sean Corson gave an update on the Draft Environmental Impact Statement (DEIS)/Management Plan timeline. Corson talked about the current review timeline and process.

Don Schug asked about how the meetings are conducted in Washington, DC. Schug asked if the Reserve was reaching a compromise based on a review of science each of their respective positions. Wilhelm clarified that they've (Reserve) been meeting with the National Marine Fisheries Service (NMFS) regional office, not WPFMC. Wilhelm stated that the role of NMFS was to review with the National Marine Sanctuary Program (NMSP) the recommendations, (draft regulations) the WPFMC provided. Schug asked if the process was the same based on the underlying science, or the regulations. Wilhelm stated that the main task was to determine consistency with the goals and objectives and stated that no decisions have been made. Wilhelm stated that the goal of the findings document is to determine whether the draft regulations are consistent with the goals and objectives.

Tosatto pointed out that there are a number of processes, and that the 304 (a)(5) is one of those processes. If they are accepted, they are included in the designation process, but that doesn't mean that they are implemented in the end, in any way. The finding will determine the outcome of that discussion. Tosatto stated that the two ongoing processes are the designation process and the National Environmental Policy Act (NEPA) process and those are closely linked, but are still two different processes. Tosatto then stated that the NEPA process has to consider all the alternatives, whereas the sanctuary designation process doesn't have to.

Discussion on RAC Alternative

Johns asked Clark if she could clarify the state's position any further.

Clark stated that the governor and Young expressed their own opinions at the press conference on what they'd like to see happen in the NWHI. Clark repeated that both the governor and Young would like to see an eventual phase-out of commercial fishing in the NWHI. Clark also stated that Young said his desire to achieve this would be five years; but the state could not be specific at this point. The state wants the phase-out approach to give time for the market to readjust. Clark commented that discussion of sustenance and recreational fishing is still

ongoing. Clark stated that the state's position is clear for state waters, but what the state would like to see the federal government in federal waters hasn't been completely worked out yet.

Johns stated that in regards to bottomfishing, the state's position has changed to advocating a phase-out over a number of years. Johns then asked Clark when she thought the state would be able to finalize their position on bottomfishing. Clark replied that certainly by box four (previous timetable presented by Corson - PowerPoint on screen), the state would be able to finalize their position on federal waters. Clark commented that when the state made their announcement, they were very clear on what they wanted to see happen regarding commercial activity and their support for Native Hawaiian access. Clark re-iterated that the state hasn't yet completed its analysis on federal waters.

Discussion continued on when the RAC would again be able to formally comment on the DEIS and management plan.

VI. PUBLIC COMMENT

Ellen Athas - Ocean Conservancy

Johns then called on Athas from the Ocean Conservancy to give her update.

Athas commented that the Ocean Conservancy would be issuing a report on the NWHI bottomfish fishery analyzing recent information from NMFS soon this month (October). Athas then talked about the information that NMFS issued on bottomfish overfishing. Athas also commented on the methodology that was used by the Ocean Conservancy in analyzing the NMFS data.

Hunter asked about the data rule, and if it was about how the data was interpreted, or if it was the timeline. Athas stated it was about how the data was interpreted, and setting up the lines for where the overfishing would occur, at what point that would be.

Tosatto stated that PIRO's Science Center is looking at the report and will issue a response. Tosatto also commented that the data collection isn't timely and they (NMFS) are working at gathering more timely data and updating the data itself as well as improving the methods used to apply the control rules. Tosatto commented that a small fishery that's relying on fishery dependent data doesn't take much to change the interpretation. Tosatto then stated that the science center is looking at normalizing the data. Tosatto mentioned that the effort underway will hopefully be completed during the month of October. The stock assessment will be based on data from 2003 and part of 2004.

Sylvia Spalding commented that in 2003 the control rule changed from spawning potential ratio to Maximum Sustained Yield (MSY) because the biomass or mortality data wasn't available which is why an approximate Catch Per Unit Effort (CPUE) as Mike (Tosatto) was telling the RAC that if you have a change in fishermen, from an experienced to an inexperienced fisherman, that alone can change CPUE a lot.

Spalding commented that WPFMC did see a copy of the report from the Ocean Conservancy and it was their understanding that it wasn't peer-reviewed by the Science Center. Spalding

commented that the WPFMC did see a copy of it, and one of the things that scientists told the WPFMC is that they've been using a linear regression model, and most of the modelists they have been talking to say a dynamic model should be used. The study used data from 1988, Spalding commented, and if you take that data and apply it in other ways, it'll show that overfishing is not occurring and that the stock is either stable or actually could be increasing since the data is actually available since the late 1940's.

Spalding also mentioned that if you take that data and go back 5 more years from 1988 to 1983 you'll see that the stocks are either stable or could be interpreted as increasing. Spalding told the RAC that all the information from WPFMC is available on their website. Spalding went on to mention that other indicators besides using CPUE is the Spawning Potential Ratio (SPR), if one looks on the WPFMC website one can see that all of those show that if you look at the data archipelagic-wide about 20% which means there's no overfishing occurring and if you look at the NWHI alone, species by species, the overfishing is not occurring, and then if you look at the mean weight which is another way scientists see if a stock is healthy and stable that will indicate that a stock is healthy. Finally, Spalding mentioned that WPFMC is looking forward to the Science Center coming out with their report and a peer review of this study to have more information.

Athas commented that the study is being peer-reviewed right now before its being formally released. She also commented that she wanted to let the RAC know about the issue, just as they were letting people in Congress know about the issue as it came forward.

Spalding then asked Athas if the Ocean Conservancy would consider all the available data. Athas replied that the Ocean Conservancy used the data NMFS said was the best available data and used that to conduct the analysis. Athas also commented that the Ocean Conservancy used the control rule that NMFS said was the best control rule, to conduct their analysis.

Schug stated that he is uncomfortable at the timing of Athas' presentation. He commented that if there had been a peer review process conducted and the RAC was given the information after the peer review, he'd be a lot more comfortable hearing the presentation. Johns stated that Athas' presentation was purely informational.

Spalding stated that there is a difference between overfishing and overfished. Overfishing means that the effort, if it was continued, could lead to a depleted stock; as opposed to overfished, which means it has gone over the level by which the fishery could sustain itself.

The RAC's Alternative Table (page 3 in the Alternative Resolution) was passed out. Discussion continued on the state's position versus the RAC's position.

Cha Smith/Stephanie Fried

Fried stated that the Hui was astonished at the apparent reversal in the state's position. Fried stated that she had requested in writing from Young on Monday (10/03) regarding the state's position in relation to federal waters and that Young told the Hui in writing that the position was, that the rules in federal waters should be fully consistent with the rules the state had declared in state waters and the only thing that he (Young) was wondering about was the state's position on

sustenance fishing. Fried then commented that what the governor signed doesn't appear to allow sustenance fishing in state waters.

Fried stated that the reversal of the state's position is "shocking" and the Hui would be talking to Young on Monday.

Clark re-stated that the state has not declared its position on federal waters. Fried commented that Young had stated both orally, and in writing that the state's official position was to do the same things in federal waters that the governor had just signed the rules in state waters.

Johns stated that they (RAC) would need to get some clarity on the states' position regarding federal waters. Discussion continued on what, exactly was known about the state's position in federal waters, and the alternatives being considered in the DEIS process.

Smith stated that over the past five years the Hui has taken a particular role in trying to analyze the information and the positions and policies that have been developed and has tried to interpret those and provide a platform for discussion and that role is one the Hui has taken seriously. Smith commented that the role the Hui has taken has been based on trust and that the RAC would trust their intention in trying to accomplish a transparent process, where the long term implications are understood regarding the actions that are taken in the NWHI. Smith stated that the Hui is concerned about the resolutions passed at the last RAC meeting and requested that they be withdrawn.

Smith stated that one of the messages she was carrying was from the board president of KAHEA and the president of 'Ilio'ulaokalani Coalition, Vicky Holt Takamine. Smith expressed that she (Takamine) has serious concerns about the RAC resolution as it relates to indigenous rights and the ownership of materials that are extracted from federal waters as it is indicated that those are owned by the federal government. Smith also commented that the RAC needs to look at that issue further and examine how it impacts Hawaiian rights.

Fried stated that the governor's announcement is an extraordinary step forward. She asked that the RAC take a look at both resolutions passed at the last RAC meeting and asked the RAC to amend their alternative to be consistent with state waters. She also wanted the RAC to repeal its statement on the RPA's. She stated that the only way one could eliminate the RPA's would be to repeal the E.O.'s. Fried then talked about the packet that she handed out (Attachment 1).

Fried talked about certain purported errors in the resolutions that the RAC passed at the June meeting. Fried expressed concern with the management plan resolution and the particular section which talked about property rights and how all living and non-living material removed from the proposed sanctuary would be the property of the federal government. Fried stated that this section "alarmed" some of her Native Hawaiian colleagues. Fried also commented on a number of other sections in the management plan resolution including the composition of the SAC. Fried recommended that the management plan resolution be withdrawn and that the RAC reexamine it in working groups. Fried then commented that there was no public input at the last two subcommittee meetings. Finally, Fried stated that this is a good opportunity for the RAC to

urge the National Ocean Service (NOS) and NOAA to have a preferred alternative which reflects the State of Hawai'i Marine Refuge rules the governor recently signed.

VII. DISCUSSION ON POSSIBLE RECONSIDERATION OF THE MANAGENT PLAN RESOLUTION AND ALTERNATIVE RESOLUTION SUBMITTED AFTER THE JUNE 1-2, 2005 RAC MEETING

Discussion began on the request for the RAC to reconsider the position it took on the management plan resolution and the alternative resolution. The RAC viewed and discussed the official press release from the governor's office; the RAC also discussed the use of the word "property" as it applies to Native Hawaiian rights and ceded lands. The RAC discussed the pros and cons of taking action on the June resolutions versus postponing taking action until later. There was also discussion by the RAC on the DEIS process and different alternatives which may be analyzed in the DEIS. Finally, there was discussion on writing a letter to the governor applauding the state for its recent action in signing the State of Hawai'i Marine Refuge Rules and asking the state to clarify its position on federal waters.

VIII. ACTION ITEMS

A) Motion: To send a letter to governor Linda Lingle applauding the state on their recent decision on the signing of rules for the State of Hawai'i Marine Refuge, and asking the State to clarify its position on federal waters.

Proposed by: Bill Gilmartin

Seconded by Laura Thompson

Unanimously approved.

Discussion

There was no further discussion on the first motion. Discussion began on the RAC's consideration on writing a letter to NMSP Headquarters on clarifying their respective position in the alternative they submitted for consideration in the DEIS in June.

Hunter proposed a motion to send a letter to NOS saying that in light of momentous changes, the RAC would like to clarify their respective statement about the RPA's and about the length of time of grandfathering-in of existing bottomfishing permits.

B) Motion: To send a letter to NOS saying that the RAC would like to clarify their position on the RPA's and shorten the length of time that existing bottomfish permits would be grandfathered in.

Proposed by: Cindy Hunter

Seconded by: Laura Thompson

Motion withdrawn.

Discussion

Discussion began on the possible content of the letter and whether the RAC wanted to provide clarification on their previous alternative, what that statement would be and if they really wanted to provide clarification at the time. There was also discussion on the legality of changing the RAC alternative and its relationship to the E.O.'s.

The RAC then discussed whether they wanted to clarify their position on the alternative they submitted in June, or change their position on that respective alternative. Discussion continued to clarify what the motion was.

Paul asked Hunter to withdraw her motion, as consensus could not be reached on exactly what the contents of the letter would be.

Hunter withdrew her motion.

The RAC would be considering whether or not they would be referring the letters to a subcommittee or working group upon the convening of the meeting tomorrow.

IX. PUBLIC COMMENT

Fried commented that there were no errors in her handout (Attachment 1).

X. ADJOURNMENT

The meeting was adjourned at 4:23 pm.

October 6, 2005

Draft Notes

Day Two

ATTENDEES [Advisory Council Members]: Kekuewa Kikiloi (Native Hawaiian); ‘Aulani Wilhlem (NWHICRER); Robert Wilson (U.S. Coast Guard); Bill Gilmartin (Research); Gail Grabowsky (Education); Don Schug (Research); Kem Lowry (Citizen-At-Large); Laura Thompson (Conservation); Linda Paul (Conservation); Tim Johns (State of Hawai‘i); William Aila (Native Hawaiian); Buzzy Agard (Native Hawaiian); Jessica Wooley (Conservation Alternate for Paul Achitoff); Cindy Hunter (Conservation); Michael Tosatto (NOAA National Marine Fisheries); John Muraoka (U.S. Department of Defense); Beth Flint (U.S. Fish and Wildlife Service, for Jerry Leinecke); Naomi McIntosh (HIHWNMS). *Excused:* Bobby Gomes (Commercial Fishing); Rick Gaffney (Recreational Fishing); Paul Achitoff (Conservation). *Absent:* Ray Arnaudo (U.S. Department of State); Philip Taylor (National Science Foundation); Kitty Simonds (WPFMC).

[Alternate Council Members (not representing voting members)]: Takiora Ingram (State of Hawai‘i).

[NWHI CRER Staff]: Malia Chow; Moani Pai; Sean Corson; Andy Collins; Tom Friel; Naomi Sodetani; Hokualea Johnson; Mokihana Oliveira.

[NMSP Staff]: Allen Tom; Hans Van Tilburg; Kelly Gleason.

[Members of the Public]: Cha Smith (KAHEA); Stephanie Fried (Environmental Defense); Ellen Athas (Ocean Conservancy); Mark Guagliardo (public).

I. CALL TO ORDER AND REVIEW OF THE AGENDA FOR THE DAY (JOHNS)

Meeting called to order by chair Johns at 9:08 am. Pule by William Aila.

Schug wanted to clarify some of his remarks from the previous day’s discussion, commenting that what he objected to yesterday was, in his opinion, the ill-advised presentation of study results before they had been reviewed by fishery scientists in Hawai‘i. Schug commented that having the local fishery scientists review the study (presentation by Ellen Athas, Ocean Conservancy) prior to the presentation would constitute “good science” with respect to any assessment.

II. RESERVE PERMITS UPDATE (WILHELM)

Wilhelm provided an update on the permits for the 2005 field season by showing a brief PowerPoint presentation on the number of permits requested for 2005, the number of permits approved and the number reviewed, but not required. Wilhelm further stated that the Reserve has copies of most of the reports on file.

Hunter asked what would happen should the respective permittees not get their report in on time. Moani Pai stated that she would take lateness into consideration if/when the permittee applies for a future permit.

Johns asked what protocols are required before the new permittees go up to the NWHI. Wilhelm stated that there are currently discussions going on regarding development of cultural protocols. Wilhelm stated that there are “All Hands” meetings for RAMP and other cruises on the Hi‘ialakai. Wilhelm stated that for invasive species, boat hulls going into USFWS waters are inspected before they are allowed up in the required refuge (per the USFWS permit process) and the Reserve is currently working with partner agencies to implement hull inspections when the Reserve becomes a sanctuary.

III. PRESENTATION ON DATA GATHERING ON NIHOA ISLAND DURING 2005 EDUCATION CRUISE (KIKILOI)

Kekuewa Kikiloi provided a presentation on the research he conducted while on the 2005 Education Cruise. While up in the NWHI, he traveled to Nihoa Island and gathered coral samples and other data from 29 sites on the island. Kikiloi commented on the difficulty of obtaining data from some of the more remote sites and talked about the problems of using radio-carbon dating to date some of the sites, due to the high acid levels from bird excrement on the island.

Gilmartin asked how many people he thought Nihoa could have supported. Kikiloi commented that according to Kenneth Emory’s estimates, Nihoa could have supported around 170 people. Thompson asked why the different areas on the island didn’t have Hawaiian names, Kikiloi replied that in his research, he hasn’t found much information regarding place names on the islands in the NWHI. Kikiloi then commented that the names he used in the presentation (West Valley, etc.) were given by the Tangier Expedition in 1924-25.

IV. GIS MAP WITH 2003-2005 PERMITTED ACTIVITIES (JOHNSON)

Johnson deferred showing the GIS Geographic Information System (GIS) map to the RAC in the interest of time. She asked that everyone to give their email addresses to her so she could get the map to the meeting attendees.

V. UPDATE FROM ROP IMPLEMENTATION SUBCOMMITTEE CO-CHAIRS (GILMARTIN & SCHUG)

Gilmartin provided an overview of the activities the ROP Implementation Subcommittee addressed, and then reminded the audience that there are also a lot of activities that have been initiated by Reserve staff that aren’t in the ROP. Schug also commended Reserve staff for all their progress on the implementation of the Reserve Operations Plan.

VI. UPDATE ON OVERALL STATUS OF ACTIVITIES IN THE RESERVE OPERATIONS PLAN (ROP) (WILHELM)

Wilhelm provided an overview of the process staff went through to conduct analysis on the ROP. Wilhelm described and provided examples of the four categories that staff used to place the implementation status of all the activities in the ROP: 1. Initiated & Ongoing and Completed; 2. To Be Initiated; 3. Post Designation and 4. Revised. Wilhelm further commented that staff

looked at the ROP activities and their completion pertaining to the respective output for each category.

After providing the overview, each Reserve staff lead presented on their respective action plans in the ROP. A list of staff leads, the presentation order and their assigned action plans follows:

Operations – Wilhelm
Education & Outreach – Collins/Sodetani
Enforcement – Friel
Native Hawaiian Cultural Resources – Pai (for Amona)
Maritime Heritage – Van Tilburg
Research & Monitoring – Chow
Mapping – Chow
Response, Damage Assessment & Restoration – Collins
Marine Debris – Collins
Sanctuary Designation - Corson

Reserve staff provided an update on current accomplishments in their respective action plans; presented on activities they anticipate initiating and/or completing in the next couple of months; and also presented on activities that have been conducted which relate to their respective action plans, but aren't necessarily part of the ROP. Questions from the RAC were answered upon the conclusion of each presentation.

Johns recommended that the next ROP update include an executive summary report on top of the ROP report, with changes in the implementation status and changes in the "To Be Initiated" items. Johns encouraged the RAC members to look at the rankings in the ROP and make sure that those rankings are appropriate and match each activity accordingly. Paul thanked the staff for working hard on the ROP and all materials for the ROP Implementation Subcommittee meetings and the RAC meeting.

BREAK

Johns called for a break at 10:51 am.

VII. PUBLIC COMMENT

Smith commented that in regards to the urgency and importance of addressing the existing resolutions that are in question and of concern; decisions the RAC makes do go back to Washington, DC. Smith stated that her NGO colleagues meet regularly in Washington, DC and important decisions are made in DC; therefore it's critical that the RAC take action in a timely manner on the resolutions. Smith also stated that she has serious concerns about the lack of transparency in notification about the RAC Subcommittee meetings.

Fried commented that it is her understanding that the RAC charter mandates sunshine laws and open public notice of the meetings and notification to the RAC of the meetings. Fried held up a permit sheet and commented on issues in the permit regarding treatment of blackwater discharge and vessels outside of the 100 fathom mark of the RPAs.

VIII. DISCUSSION ON CLARIFYING THE RAC's POSITION ON ITS ALTERNATIVE RESOLUTION

Johns instructed the staff to continue to notify the public in an appropriate and timely manner about subcommittee meetings.

Johns then commented that he had a problem with adding items to the RAC meeting agenda at the last minute. He stated that serious items like changing the RAC's position on the alternative should be put on the agenda in a timely matter, not the day before the meeting. Johns stated that the problem with placing items on the agenda at the last minute makes it difficult for interested parties to attend the meeting.

Johns referred to Fried's email (Attachment 3) which re-iterated the State's position on federal waters. Johns also stated that the State has not gone through a point by point analysis on every position. Johns then stated that yesterday the RAC took action on drafting a letter applauding the state on its action for state waters and asking them for clarification on federal waters.

Wooley commented that she supports Achitoff's submittal and would like it submitted into the record (Attachment 2). Johns stated that basically Achitoff would like to have the RAC clarify its position especially in regard to the RPA's.

Hunter then handed out a re-draft of a letter that she submitted for consideration (Attachment 4). Hunter said the letter addresses two points, first that the RAC wants to amend its position on the RPA's because of the relationship to the Executive Orders and second, that the RAC would like to generally change its position because of the State's request. Hunter stated that the letter was a draft submitted for the RAC to consider.

Kem Lowry stated that he felt uncomfortable on taking action on the proposed resolution submitted by Hunter. Kem Lowry then stated that he would be prepared to draft a letter as suggested by Johns. Kem Lowry stated that in addition he would like to see language in the letter on the notion that in light of the State's position, the RAC supports the principle of seamless management; however there are many details to be worked out regarding the seamless management concept. Kem Lowry then provided an example of buying out the fishermen that currently hold permits to fish in the NWHI. He stated that he has a problem with only supporting the buyout and would like to know what the full range of alternatives are for the fishermen before recommending specifics.

Wilhelm reminded the RAC of the official NOAA answers to their questions about the E.O. and referred them to the "Frequently Asked Questions" section on the Reserve website: <http://hawaiiireef.noaa.gov/faq/welcome.html>.

Paul talked about what complement and supplement means to the extent that there is a difference between the Reserve and the sanctuary, that difference cannot result in lesser protection as a whole for the Reserve as it currently exists, it can result in more protection, but cannot reduce protection. Paul then stated that the management plan subcommittee thought that by making the area one big SPA, there would be more protection than simply maintaining the RPA's.

Conversation continued on the RPA's and what would be included in the letter to the NMSP.

Schug reminded the RAC that under the E.O., the bottomfish fishery could last longer than 20 years.

Johns stated that he was concerned with the sunshine issue, and the fact that the discussion was occurring and decisions may be made without proper public notice. Johns stated that the RAC is trying to run a transparent process and would like to see the decision made in a more deliberative process. Johns stated that if the RAC's decision was to accommodate one of the Council members, then he didn't think the RAC should change this on the fly. Johns then stated that changing its position the RAC could be characterized as taking a softer and less protected approach.

Discussion continued on what action the RAC would take regarding changing, or clarifying their position on their alternative resolution.

IX. ACTION ITEMS

Kem Lowry stated that the RAC could send a letter stating its intent in making the recommendations that were submitted as their alternative in June. Lowry further stated that the RAC could send a letter spelling out and clarifying their intent, which wouldn't constitute a substantive change in position.

A) Motion: To send a letter to the Department of Commerce commending the state the establishment of the NWHI State Marine Refuge and also expressing the RAC's intent of the previous management recommendations and expressing the principal that the RAC wants to fully cooperate with the state in having seamless management system. Letter to be drafted by Kem Lowry and circulated to the RAC leadership for comments.

Proposed by: Kem Lowry

Seconded by: Linda Paul

Unanimously approved.

Discussion: Hunter requested that the letter be drafted and edited using track changes.

B) Motion: Should the RAC not reach consensus on the letter to DOC which will be drafted by Kem Lowry, that the letter then be referred to the DEIS/ Management Plan Subcommittee.

Proposed by: Tim Johns

Seconded by: Linda Paul

Unanimously approved.

Discussion: Gilmartin asked what subcommittee the letter would be referred to. Johns stated that the subcommittee taking up the letter would be the DEIS/Management Plan subcommittee. Wooley commented that she would like to be added as a member of that Subcommittee.

X. ADJOURNMENT

The meeting was adjourned by Chair Johns at 12:10 pm.

Recommendations for RAC Action:

Given the Governor's surprise announcement and visionary proposal for federal as well as state waters, here are a few recommendations as to steps that the RAC could take in response.

- 1) Withdraw the two RAC resolutions presented at last meeting: Spreadsheet of RAC DEIS Alternative Recommendation and 10 page Resolution Regarding Sanctuary Management Plan Development.
 - a. Amend 1-page spreadsheet, "RAC DEIS Alternative Recommendation" to be consistent with state rules and Governor's announcement and to clarify that RAC is not calling for annulment of EOs (by eliminating RPAs). See draft language which represents attempt to make RAC reso consistent with state rules, safeguarding of EO (by not repealing RPAs), etc.
 - b. Given shortage of time from Governor's announcement, and lack of time for detailed edits, inform NOAA that RAC will resubmit a "Resolution regarding proposed Sanctuary Management Plan development" at a later date. (Note 1)
- 2) Call on NOS to ensure that the DEIS is issued for public and RAC comment with a preferred alternative reflecting Governor's position. (NOS currently plans to issue the DEIS without specifying a preferred alternative. The Governor has recognized public comment on NWHI and moved accordingly. The State is key partner with NOS, and NOS has stated for years that the reason it will not close fishing in federal waters is because it is following the wishes of the State. Given the State's final position, selecting a preferred alternative consistent with the state and with public comment to date will save significant time, money, will simplify the administrative requirements for the design of draft regulations and reduce animosity towards NOS.)

Note 1: A number of RAC members have indicated that they did not thoroughly read the Sanctuary Management Plan reso prior to voting on it and that there are significant problems with the reso. For example, we received comments from RAC members indicating that they were unaware that the reso states on page 7, "All living and non living material removed from the Sanctuary remains the property of the U.S. government." Native Hawaiian cultural practitioners have expressed deep concerns regarding the potential impact on submerged ceded lands should they be brought into the sanctuary and Native Hawaiian artifacts and iwi. In addition, explicit recommendations of the RAC SMP Subcommittee regarding the composition of the SAC were omitted – i.e. the recommendation that the format of the RAC = SAC in terms of Native Hawaiian, science, conservation NGO, education, state, etc. interests. There are a host of additional issues with this reso and insufficient time for analysis at this meeting.

NOTE 2: For reference, below is language from state rules signed by Governor Lingle on Thursday.

ACTIVITIES PERMITTED UNDER NEW STATE RULES

Department of Land and Natural Resources

Adoption of Chapter 13-60.6

Hawaii Administrative Rules

May 13, 2005

(From office of Governor Lingle)

13-60.5-5 Permitted activities.

(a) A person may, with a valid permit or authorization issued from the board, enter the refuge, subject to the restrictions of subsections (b), (c), and (d).

(b) A person shall only enter the refuge to engage in activities that do no harm and do not degrade the coral reef ecosystem, related marine resources and species, as specifically authorized by law, for the following purposes:

(1) Scientific or education purposes;

(2) Non-extractive purposes undertaken to further the knowledge of resources or which provide for enhanced resources protection or benefit resource management; and

(3) Subsistence, traditional and customary practices by Native Hawaiians consistent with the long-term preservation of the refuge resources in accordance with permit conditions specified in section 13-60.5-6.

(c) Even with a valid permit, the department may prohibit entry into any location or locations within the refuge as it may deem appropriate to conserve or manage resources.

(d) No entry is allowed for extractive activities, except as may be permitted in subsection (b) in the following areas:

(1) All State marine waters surrounding Nihoa Island, Necker Island, French Frigate Shoals, Laysan Island, Maro Reef, Gardner Pinnacles, Lisianski Island, Pearl and Hermes Atoll, and Kure Atoll in the marine refuge as defined in section 13-60.5-2 and as generally represented in exhibits "A", "B", "C", "D", "E", "F", "G", "H", and "I", respectively, located at the end of this chapter;

	6/2/05 RAC DEIS Alternative Recommendation	Proposed changes
Landward Boundary	The sanctuary landward boundary should overlap the waters of the State of Hawaii's NWHI Marine Refuge, Hawaiian Islands National Wildlife Refuge, and Midway Atoll National Wildlife Refuge waters.	
Seaward Boundary	Extend Reserve boundary such that the Sanctuary's outer boundary includes known precious coral beds and monk seal foraging areas at Seamount 10 and Seamount 11 northwest of Kure Atoll out to 180 degrees longitude, and Salmon Bank.	
Regulations	Access is prohibited unless permitted, except enforcement activities and passage without interruption.	
Zoning-SPAs	Entire area becomes a SPA over time with activities allowed only by permit (research, education, discharge, anchoring, etc.)	Entire area becomes a no-take SPA with research, education, management and Native Hawaiian traditional and cultural activities allowed only by permit. [From State rules, Section 5.5 (b)]
Zoning- other zones	No-fishing zones established which mimic State and USFS marine waters and no-take areas recommended by WPFMC (out to 50 fathoms at Laysan and FFS).	RPAs, State and USFS refuges continue to exist. Strictest conservation measures prevail. [Note: if RAC calls for no RPAs, this means RAC calls for EOs to be undone. RPA closures are permanent, not subject to 5 year review.]
Permits (non-fishing)		
Recreation	Non-extractive recreation only, by permit	No, except as allowed by the USFWS at Midway Atoll National Wildlife
Ocean Tourism/Special Use	No, except at Midway. (Any visitation to the area of this kind should take place under research or education permit.)	
Research	Limited by permit criteria, activity, and location on a case-by-case basis, including volunteer programs. (Must further the conservation and management purposes of the Sanctuary.)	
Education	Limited by permit criteria, activity, and location on a case-by-case basis, including volunteer programs. (Must further the conservation and management purposes of the Sanctuary.)	
Management	Limited by permit criteria, activity, and location on a case-by-case basis, including volunteer programs.	
Native Hawaiian Practices	Limited by permit criteria, activity, and location on a case-by-case basis.	
Permits (fishing)		
Precious Coral	No	
Crustacean	No	
Coral Reef Species	No	
Commercial Pelagic Trolling	No	

Bottomfishing and Associated Pelagic Trolling	No over the long term. However, should allow for a "grandfathering" of current, active bottomfishermen who would, over a period of time, be phased out through attrition or a buy-out program. Those that selected a buyout would need to make their decision within one year after the date the buyout offer is made. Those that opt to remain in the fishery would need to cease their fishing operations by the year 2025. No new permits would be issued and no existing permits may be transferred. All fishing would be limited to areas outside of no fishing zones established and referenced above.	No. Current active bottomfishers would be phased out through attrition or a buy-out program within one year of sanctuary establishment. No new permits would be issued and no existing permits may be transferred. OR "Phase out commercial bottomfishing within one year of designation, and analyze alternatives to facilitate closure of this fishery as part of the EIS development, including buy-out of existing permits, or other closure options. In the interim, limit federal permittees to those permitted as of the year 2000, through catch and size limits, gear restrictions, time and area closures, and zoning." - RAC Goal 7
Permits (Non-commercial fishing)		
Native Hawaiian Subsistence	Yes. Native Hawaiian subsistence activities should be permitted sanctuary-wide, including subsistence fishing, to the extent consistent with existing law. Such practices shall mean: "the Native Hawaiian use of ocean resources for the purposes of perpetuating traditional knowledge, taking responsibility and caring for the environment, direct personal consumption while staying in the NWHI. The sale of any marine resources is prohibited. Provisions may be made under this definition to include the customary practice by Native Hawaiian Ni'ihau and Kaua'i families to travel to and bring back ocean resources for community sharing."	
Sustenance	Yes. Sustenance fishing for pelagic and bottomfish species using pole and line, trolling and handline methods only, by permit. Locations where such activities could take place would be managed through permit restrictions.	No, except as allowed by the USFWS at Midway Atoll National Wildlife Refuge.
Recreation (personal)	No, except as allowed by the USFWS at Midway Atoll National Wildlife Refuge.	
Sport fishing (fee-for-service)	No, except as allowed by the USFWS at Midway Atoll National Wildlife Refuge.	

Attachment 2.**Handed out at June 1 & 2 RAC meeting****By Paul Achitoff****EARTHJUSTICE**BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
INTERNATIONAL JUNEAU, ALASKA OAKLAND, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

TO: Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
Advisory Council
FROM: Paul H. Achitoff
DATE: October 6, 2005
RE: Executive Orders

Aloha RAC members,

As you know, I did not attend yesterday's RAC meeting. I did receive a report from my alternate, however. It sounded as though there was some confusion regarding the legal status of the Executive Orders. Perhaps I can help straighten some of it out.

The Reserve Advisory Council and the Reserve Preservation Areas were created by Executive Order of the President of the United States (E.O. 13178). Congress had just passed the National Marine Sanctuaries Amendments Act of 2000 (NMSAA), which stipulated the conditions for establishing permanency of closures in the NWHI, including a requirement for public comment prior to any permanent closures.

The first Executive Order (13178) was issued on December 7, 2000, with the stated purpose as follows:

Executive Order 13178, December 7, 2000

"Section 2. Purpose. The purpose of this Executive Order is to ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resources and species (resources) of the Northwestern Hawaiian Islands."

This EO established the RAC, described the RAC's role of providing advice and recommendations to the Secretary on the Reservations Operations Plan and the designation and management of any sanctuary. In addition to conservation rules, to further protect Reserve resources, the EO set aside Reserve Preservation Areas

(RPAs) in federal waters "until some or all are made permanent after adequate public review and comment, within which all activities referred to in paragraph (b) of this section are prohibited."

After public comment on the RPAs, the second Executive Order (13196) was issued on January 18, 2001. The sole purpose of this EO was as follows:

Executive Order 13196, January 18, 2001

"Sec. 2. Purpose. The purpose of this order is to amend Executive Order 13178, and to **make permanent** Reserve Preservation Areas, as modified below, to ensure the comprehensive, strong, and lasting protection of the resources of the Northwestern Hawaiian Islands." (Emphasis added.)

By calling for the elimination of the RPAs, the RAC is also calling for overturning EO 13196 and for altering EO 13178. If it is not your intention to overturn EO 13196 and cause the President to weaken 13178, it is important to clarify to NOAA that the RAC's intention is to add protections ("complement and supplement") and not to remove the RPAs. This could be done by making clear that you are not calling for the removal of the permanent protections afforded by the RPAs, but rather for the addition of a new layer of protections and closures throughout the area to be designated as a sanctuary. You could specify that the RPAs remain (as do the state and federal refuges) and the strictest conservation measures prevail. Please note that sanctuary protections are not permanent and are subject to review every five years. RPA protections are established as permanent, not subject to additional review.

I was present at the Governor's press conference and it was entirely clear that Peter Young and the Governor support the extension to federal waters of the same protections that have been given to state waters. I urge the RAC to modify its alternative to make protections in federal waters at least as stringent as those created by the state for state waters. In fact, considering the Governor's recent announcement, as well as Rep. Case's bill, it would be anomalous if the RAC were to be advocating less stringent protections in federal waters. Considering the timeline for the sanctuary designation process, it would be a big mistake for those who share my perspective on this to imagine that the RAC need not make its position absolutely clear right now; waiting until a future RAC meeting, or to comment on an EIS, would be far too late.

Subject: Re: URGENT Peter, Linda, Bob: Reversal of Governor's NWHI position?

From: PeterYoung@hawaii.gov

Date: Thu, 6 Oct 2005 08:36:20 -1000

To: "Stephanie Fried" <SFried@environmentaldefense.org>

CC: bob.awana@hawaii.gov, conch@hawaii.rr.com, "Dave Raney" <d_raney@verizon.net>, joy.watari@hawaii.gov, kahea-alliance@hawaii.rr.com, Linda.Smith@hawaii.gov, "Stephanie Fried Yahoo" <stephanie_fried@yahoo.com>, vickyt@hawaii.rr.com, tjohns@damonestate.com

BCC: Aulani.Wilhelm@noaa.gov

Stephanie:

We have **not** changed our position.

We want the federal government to follow our lead and provide protective measures in the Northwestern Hawaiian Islands.

We will seek similar protective measures in federal waters and work on details with the Sanctuaries program (as well as Fish and Wildlife Service) as they progress with their EIS and rule-making process.

We are dealing with two federal departments that have varying missions and policies. The details in federal waters need to be resolved.

Peter.

"Stephanie Fried"

<SFried@environmentaldefense.org>

10/06/2005 07:47 AM

To <PeterYoung@hawaii.gov>, <Linda.Smith@hawaii.gov>, <bob.awana@hawaii.gov>, <joy.watari@hawaii.gov>

cc <vickyt@hawaii.rr.com>, <kahea-alliance@hawaii.rr.com>, <conch@hawaii.rr.com>, "Dave Raney" <d_raney@verizon.net>, "Stephanie Fried Yahoo" <stephanie_fried@yahoo.com>, >

Subject URGENT Peter, Linda, Bob: Reversal of Governor's NWHI position?

Aloha Peter and Linda and Bob,

Thank you so much for meeting with us the other day. There has been an incredible amount of continued celebration not only throughout the islands but also on the mainland and internationally regarding the Governor's and Peter's extraordinary announcements regarding protections for state waters and recommendations that federal waters are to be protected in the same manner as state

waters. You have provided a wonderful example for the rest of the country and the world to follow.

We -- and the news media -- understood from Governor Lingle's statements and Peter's statements at the NWHI press conference, the press release and your comments on Monday that the governor not only issued strongly protective state refuge rules (below) -- allowing entry only for scientific, educational, non-extractive purposes to provide for enhanced protection or management, or subsistence, traditional and customary practices by Native Hawaiians -- but also took the extremely welcome step of recommending to the federal government that state refuge protections be applied to federal waters -- i.e. federal protections should be designed to be consistent with state rules (seamless management) in order to provide the type of protections necessary for this special place.

You can perhaps imagine how stunned we were yesterday to learn that a DLNR staff person announced at a public meeting of the NWHI Reserve Advisory Council, which was poised to echo the Governor's state rules and recommendations for federal rules, that this was not the case, and that the state is no longer calling for consistency between state and federal NWHI protections, that even activities like recreational fishing -- prohibited in state waters by the Governor's signing of the rules -- could be considered for federal waters. This announcement of a complete reversal of the Governor's public position stunned us all. News media are still contacting us for information on the Governor's wonderful position. We are holding off on discussing with the media what we were told yesterday, thinking that there must be some kind of error and that we wanted to contact you first, for immediate clarification. There is an additional half day of RAC meetings today.

Our question is: has the governor reversed her position -- announced on Thursday -- that federal rules should be consistent with the rules for state waters? State rules (below) are very clear and unambiguous, so extrapolation to federal rules is not a difficult task. We are thinking that today's announcement by a DLNR staff member was some sort of error and that neither the Governor nor DLNR intended to reverse their commitment to ensuring that the same strong protections promulgated for state waters are promulgated for federal waters.

Thank you very much for whatever information you are able to provide to us as soon as possible. Please notify your state representative to the RAC, Tim Johns, who will be presiding over today's RAC meeting regarding the Governor's position. He attended your press conference where the Governor's new position was announced but has not been officially notified in person regarding the Governor's new position. You can imagine the confusion when a staff member announced the reversal of what had been presented as the state's position at the press conference.

Due to the urgency of this matter and today's NWHI RAC meeting please call Tim Johns by cell phone. If you cannot reach him, you may call Stephanie Fried at 387 1086 (cell) and she will hand the phone to Tim. The RAC meeting begins at 9 am.

Best,
Stephanie Fried, Environmental Defense
Vicky Holt Takamine, 'Ilio'ulaokalani Coalition, P'ai Foundation
Cha Smith, KAHEA: The Hawaiian-Environmental Alliance
Dave Raney

Stephanie Fried, Ph.D.
Senior Scientist
P.O. Box 520
Waimanalo, HI 96795
808 235 7907

Excerpt

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(a) A person may, with a valid permit or authorization issued from the board, enter the refuge, subject to the restrictions of subsections (b), (c), and (d).

(b) A person shall only enter the refuge to engage in activities that do no harm and do not degrade the coral reef ecosystem, related marine resources and species, as specifically authorized by law, for the following purposes:

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(3) Subsistence, traditional and customary practices by Native Hawaiians consistent with the long-term preservation of the refuge resources in accordance with permit conditions specified in section 13-60.5-6.

(c) Even with a valid permit, the department may prohibit entry into any location or locations within the refuge as it may deem appropriate to conserve or manage resources.

(d) No entry is allowed for extractive activities, except as may be permitted in subsection (b) in the following areas:

(1) All State marine waters surrounding Nihoa Island, Necker Island, French Frigate Shoals, Laysan Island, Maro Reef, Gardner Pinnacles, Lisianski Island, Pearl and Hermes Atoll, and Kure Atoll in the marine refuge as defined in section 13-60.5-2 and as generally represented in exhibits "A", "B", "C", "D", "E", "F", "G", "H", and "I", respectively, located at the end of this chapter;

Attachment 4

**Handed out at June 1 & 2 RAC meeting
Draft Resolution by Cindy Hunter**

6 October 2005

Ms. `Aulani Wilhelm
Acting Reserve Coordinator
Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
6600 Kalanianaʻole Highway, Suite 300
Honolulu, HI 96825

Dear `Aulani,

Given the signing of strongly protective state refuge rules for the NWHI by the Governor of Hawai`i, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC) would like to take this opportunity to amend our June 2, 2005 resolutions, submitted on August 16, 2005, regarding the RAC's Alternative submitted for consideration in the DEIS and the draft Sanctuary Management Plan.

The RAC would like to amend our proposed DEIS Alternative to make it consistent with the new state NWHI refuge rules regarding allowable activities – including a ban on commercial and recreational fishing. We recommend a buyout of the bottomfish fishery.

The RAC would also like to amend our proposed DEIS Alternative to ensure recognition of the continued existence of the permanent Reserve Preservation Areas. We recommend that these existing protections be complemented and supplemented to provide the fullest possible protections.

We will resubmit detailed RAC comments regarding amendments to our draft Sanctuary Management Plan resolution at a later date.

Sincerely,

Tim Johns,
Chair
Reserve Advisory Council